

# Exhibit B

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF TEXAS  
3 TYLER DIVISION

3 WI-LAN, INC. )  
4 ) DOCKET NO. 6:10cv521  
5 -vs- )  
6 ) Tyler, Texas  
7 ALCATEL-LUCENT USA, INC., ) 9:00 a.m.  
8 ET AL ) March 21, 2013

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10 WI-LAN, INC. )  
11 ) DOCKET NO. 6:13cv252  
12 -vs- )  
13 HTC )

14 TRANSCRIPT OF PRETRIAL HEARING  
15 BEFORE THE HONORABLE LEONARD DAVIS,  
16 UNITED STATES CHIEF DISTRICT JUDGE

17 A P P E A R A N C E S

18 (SEE ATTORNEY SIGN-IN SHEETS ATTACHED TO THE MINUTE ENTRY  
19 OF THIS HEARING.)

20 COURT REPORTER: MS. SHEA SLOAN  
21 211 West Ferguson  
22 Tyler, Texas 75702

23 Proceedings taken by Machine Stenotype; transcript was  
24 produced by a Computer.  
25

1           What happened is when those showed up on the  
2 privilege log as privileged, we produced the attachments  
3 separately, and we produced those before --

4           (Phone ringing.)

5           MR. WEAVER: So if you look --

6           THE COURT: One moment. I am the only one that can  
7 happen to.

8           (Laughter.)

9           MR. WEAVER: My phone will not be ringing, Your  
10 Honor.

11           So if you look at what was produced in this case,  
12 the 88,000 pages, as I said there is approximately 20,000 of  
13 those pages that are pdf's or some other form of document like  
14 that.

15           We did an analysis of those. What percentage of  
16 those pdf's were long ago produced in this case? What we  
17 found, over 75 percent of those pdf's were identical copies  
18 were produced. Now, we haven't been able to find out whether  
19 there was a copy of the document that was produced that was  
20 virtually identical. This is a forensically identical copy.  
21 Okay? So most of this production, they have already got in  
22 their hands.

23           Let's look at the email as an example. You can see  
24 on this document, Your Honor, that there is approximately  
25 37,000 pages of the production are redacted copies of emails;

1 and contrary to what HTC suggested, Your Honor, of the 80  
2 documents we produced for in camera inspection or they  
3 identified for in camera inspection, it is nonsense that 75  
4 percent of those were non-privileged.

5           They were produced with redactions. That doesn't  
6 make them non-privileged. The redactions were the privileged  
7 parts of the document. So there is no 75-percent bucket that  
8 had no privilege assertion whatsoever associated with it.

9           The 12 documents, in fairness, Your Honor, are a  
10 mistake. During some of the meet-and-confers with the  
11 defendants, we had produced a number of documents at the very  
12 tail end of discovery and pulled them off of our privilege  
13 log. We decided to waive the assertion of privilege on those  
14 and produce those to the defendants.

15           We didn't correct the privilege log and send out a  
16 new privilege log. So the privilege log that HTC was  
17 operating under -- again, our mistake -- was not updated, and  
18 they ended up picking a number of documents that we had  
19 already produced. So we didn't waive privilege when they  
20 selected those documents. Those documents had already been  
21 produced earlier in the litigation, and we simply had  
22 neglected to update our privilege log. Our mistake.

23           But let me go to the emails for a second. So out of  
24 the nearly 37,000 pages of emails, Your Honor, 28,000 pages  
25 are follow-ons in the strings, and those strings were produced

1 previously.  
2 So using my example of you have got 10  
3 back-and-forth communications in an email string, you will see  
4 that the prior portions of those strings were produced. So we  
5 didn't produce them in a redacted form. We held the whole  
6 string on our email, but they got the six back-and-forth  
7 communications using my example. There is very little new in  
8 this production, Your Honor, beyond what they have got.

9 Now, Mr. Bader called me up and asked me if we would  
10 agree to a continuance. And we said, on what basis? Well, we  
11 have got 88,000 pages of documents to look at. And I said,  
12 and we looked at all 88,000 pages of those documents in 48  
13 hours.

14 And we didn't just look at them to see if there was  
15 something relevant in there or to see if they were duplicative  
16 because of these emails, Your Honor. The way we collected  
17 this, because it was pre the discovery order in this case, the  
18 electronic discovery order, every custodian who got a copy of  
19 that email, well, guess what, it is on our privilege log. And  
20 it is a duplicate. So we have got 10 recipients of an email  
21 that is 20 pages long, that is 200 pages of production that we  
22 pushed out the door. It is the same email.

23 So that is where we find ourselves, Your Honor, is  
24 that when I said, Mr. Bader, tell me what it is that you need  
25 the time for. I just want to look at the documents. There